

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

IN RE:)
)
Keith A Yerian) Case # 6:15-bk-01720-KSJ
) Chapter 7
Debtor)
_____)

**TRUSTEE'S EMERGENCY MOTION TO SELL REAL PROPERTY
FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES,
AND INTERESTS PURSUANT TO 11 U.S.C. § 363(f) AND CERTIFICATE OF NECESSITY**

Richard B. Webber II, Chapter 7 Trustee (the “Trustee”) duly appointed Chapter 7 Trustee for the above referenced debtor (the “Debtor”) pursuant to Sections 105 and 363(b), (f) and (m) of the Bankruptcy Code hereby files this emergency motion (“Motion”) for entry of an order for authority to sell certain real property free and clear of all liens, encumbrances, and interests. In support thereof, the Trustee respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (M), (N), and (O).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§1408 and 1409.
3. The basis for the relief requested are 11 U.S.C. §§ 363(b), (f), and (m), Federal Rules of Bankruptcy Procedure 2002 and 6004.

BACKGROUND

4. On February 27, 2015, the Debtor commenced this case by filing a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code (the “Petition Date”).
5. Richard B. Webber II is the duly appointed and qualified Chapter 7 Trustee.
6. The Trustee held and concluded the 341 meeting of creditors on April 9, 2015.
7. The Trustee previously filed an Amended Report and Notice of Intention to Sell Property of the Estate described as Debtors 100% ownership interest in the real property located at Condominium Lagaomar

Unit # 7-L Carolina Puerto Rico 00959 TIN 063-018-801-15-093 (the “Property”) (Doc. # 195) with no objections filed.

8. Trustee has just been made aware of an HOA lien in the amount of \$6,946.51 and a Mortgage Note to Banco Popular in the amount of \$96,000.00 (unsatisfied Title Defect from Debtor’s purchase of the real property).

9. The HOA lien will be paid at closing from the sale proceeds.

10. The Mortgage Note was paid in full to Banco Popular by the Debtor at the time of purchase of the Property, but the Satisfaction was never recorded (it is called Note Cancellation in Puerto Rico).

11. Trustee needs to obtain an Order from this Court approving the Sale of the Property free and clear of liens in order to obtain clear title and cancel the Note in Puerto Rico.

12. Trustee has entered into a Sale Contract with Pedro Perez for \$106,000.00 for the Property. A copy of the Contract is attached hereto as Exhibit “A” and incorporated by reference herein.

13. The closing for the Property is scheduled for January 31, 2018.

14. If the closing is not held by January 31, 2018, Mr. Perez will be homeless and the contract will be cancelled. Mr. Perez is a Veteran who suffers from PTSD.

RELIEF REQUESTED

15. The Trustee requests the entry of an order pursuant to Section 363(b), (f) and (m) of the Bankruptcy Code approving the sale of the Property free and clear of all liens, claims, encumbrances, and interests.

16. The Trustee seeks the Court’s authority to sell the Property free and clear of all liens, claims, encumbrances, and interests, but otherwise “As-Is, Where-Is” and without representations or warranties of any type, express or implied, being given by the Trustee and his professionals, pursuant to the Sale procedures described below.

17. Pursuant to Section 363(f) of the Bankruptcy Code, the Trustee may sell property free and clear of any interest in such property in an entity other than the estate if (1) permitted under applicable non-bankruptcy law; (2) the party asserting such interest consents; (3) the interest is a lien and the purchase price at [11000-710/6536820/1]

which the property is to be sold is greater than the aggregate value of all liens on the property; (4) the interest is the subject of a bona fide dispute; or (5) the party asserting the interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. *See In re Smart World Techs., LLC*, 423 F.3d 166, 169 n.3 (2d Cir. 2005) (“Section 363 permits sales of assets free and clear of claims and interests . . . It thus allows purchasers . . . to acquire assets [from a debtor] without any accompanying liabilities.”); *see also In re MMH Auto. Group, LLC*, 385 B.R. 347, 367 (Bankr. S.D. Fla. 2008).

18. The Trustee states that he shall satisfy Section 363(f)(2) of the Bankruptcy Code because the Secured Creditor consents to the sale of the property under Section 363(f)(2) of the Bankruptcy Code, free and clear of all liens, claims, encumbrances, and interests and the HOA fees will be paid at Closing.

19. Accordingly, under Section 363(f)(2) of the Bankruptcy Code, the Trustee seeks authority to sell the Property free and clear of all liens, claims, encumbrances, and interests but otherwise “As-Is, Where-Is” and without representations or warranties of any type given by the Trustee or his professionals. Notwithstanding that the Trustee will seek authority to execute all documents and instruments he deems reasonable, necessary and/or desirable to close the sale, the only documents that the Trustee shall be required to deliver to close shall be (a) a Trustee’s Deed, and (b) a copy of the Final Sale Order.

20. Trustee requests that this Court waive the 14 day period pursuant to Rule 6004(h) so the Closing can occur on January 31, 2018.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that the Court enters an Order approving the sale of the Property pursuant to Sections 105 and 363(b), (f) and (m) of the Bankruptcy Code and for such other and further relief as this Court deems just and equitable under the circumstances of the case.

Under penalty of perjury, I have read the foregoing Emergency Motion and it is true and correct to the best of my knowledge information and belief.

I HEREBY CERTIFY that a true and correct copy of the foregoing Emergency Motion has been furnished via first-class United States Mail, postage prepaid, or via electronic file transfer this January 18, 2018 to: Keith A Yerian, 5767 TREASURE LANE, GRANT, FL 32949; Brett A Elam, LAW OFFICES OF BRETT A ELAM PA, 105 S. NARCISSUS AVENUE, SUITE 802, WEST PALM BEACH, FL 33401; creditors listed on the attached matrix; and the United States Trustee, 400 W. Washington St., Suite 1100, Orlando, FL 32801.

/s/ Richard B. Webber II
Richard B. Webber II, Trustee
PO Box 3000
Orlando, FL 32802-3000
Phone: (407)425-7010
E-mail: rwebber@zkslawfirm.com

**Eddie Realty & Associates
Eddie Nieves Santiago, Realtor Lic 15185
Contrato de Opción de Compraventa
Option to Purchase Agreement**

Sellers:

Richard B Webber, Trustee of Yerian Properties LLC also Known as Keith A Yerian SS ID # xxx-xx-4554 , Case Number : 6:15-bk-01720-KSJ hereinafter "THE OWNER"
Buyer: Pedro Perez Ayala SS xxx-xx-5926, Resident of Playa Azul Apt 1107 Luquillo PR 00773

The undersigned Sellers agree to sell and the undersigned Buyer agrees to buy the real property described as follows in existing conditions ("as is"):

Address: Condominium Lagomar Unit # 7-L , 7 Ave Laguna, Carolina PR 00979
Catastro/ Property tax identification number # 063-018-801-15-093 Public Records Number is FINCA
#31.510, FOLIO #179, TOMO 594 CAROLINA 1st SECTION

1. *The buyer(s) and seller(s) understand and agree that the real property describe above is for sale in its existing condition. The cost of any improvements to the property or equipment installation required by the lender will be paid by the buyer.*
2. *The total Price is (\$106,000.00) dollars paid as follows: (\$3,000.00) as earnest Money, presented with this offer, and (\$103,000.00) dollars at the moment of closing, balance will be paid on a cashier check to the name of the Trustee at closing. If any debits or liens are pending will be subtracted from this amount.*

The Deed of Sale will be paid by the BUYER and prepared by a Notary to be selected by Closing Agent, and executed on/or before December 31, 2017. All efforts to cooperate will be made by both Sellers and Buyers. Buyer will pay the notary fees for the preparation of the deed of sale, with their original and stamps, for the original and all expenses of the deeds. Buyers will pay all the costs and expenses of a certified copy of the Deed of Sales, its recording, and all costs of financing, including discounts points and mortgage deed.

3. ***Seller Concession:** Seller will give a SELLER CONTRIBUTION to the BUYER of \$6,000.00 for closing costs. SELLER will convey to transfer to purchaser good, legal, marketable, fee simple title to the above property.*
4. *Taxes, interest, insurance, and any moneys deposited in escrow for such expenses, will be paid by seller and adjusted at the closing date.*
5. *Sellers agree to pay commission of six percent (6%) of the total Price of the property sold to Eddie Nieves, amount that will be paid at the date of the execution of the deed of sale. The escrow deposit will be on hold to be part of the Realtors Invoice.*
6. *Possession shall be given to Buyers on the Closing date or any agreement written.*
7. *This contract is subject to approval by the Sellers no later than 72 hours. When so approved, this contract shall be binding to both parties. If it is not approved, all earnest money will be refunded to the Buyers.*
8. *This contract represents the entire agreement between the parties and no verbal agreement shall bind either party.*

Page 1 of 2

9. The earnest Money deposit shall be applied to the purchase Price. If the Buyers refuse to conclude the sale on the above terms, the earnest money shall be forfeited and half of the deposit shall be paid in equal parts to Eddie Realty and the other half to the Sellers.
10. If the Buyers are ready, willing and able to execute sales deed and other closing documents and to pay the portion of the purchase price and other adjustments provided for the above, but the Sellers do not execute the deed of sale, Buyers shall have the right to specific performance of this contract plus damages if any, or at their option, may cancel this contract and receive the earnest money in total. In either case, Sellers shall be liable to pay Eddie Nieves the full commission provided herein.
11. The Buyers and Sellers understand that Eddie Nieves also known as Eddie Realty & Associates are acting solely as Brokers in this sale, and are not responsible for any defects in construction, hidden defects, malfunction of appliances, electric systems or plumbing, defects in the title of the property, permits, or noncompliance of either party pending the execution of the Deed. The Buyers recognize that they have been advised of the benefits of contracting the services of a professional property inspector.
12. This is a legally binding document. Read it carefully and in case of any doubts of any doubts consult an attorney.

Comprador/Buyer



Vendedor/Seller



Ric B. Wilches, Trustee

Vendedor/Seller _____

Fecha/Date: November 13th, 2017

Fecha/Date: November 13th, 2017

Label Matrix for local noticing

113A-6

Case 6:15-bk-01720-KSJ

Middle District of Florida

Orlando

Thu Jan 18 15:15:42 EST 2018

Antonio Escudero Viera

McConnellValdes LLC

PO Box 364225

San Juan, PR 00936-4225

Robert H Ewald

Ewald Enterprises, Inc.

12472 Lake Underhill Road

Suite 312

Orlando, FL 32828-7144

Wm. Paul Henderson

147 W. Lyman Ave.

Winter Park, FL 32789-4367

LCS Financial Services Corporation

Attn: Bankruptcy Department

6782 South Potomac Street, Suite 100

Centennial, CO 80112-4585

Sun Yo Pak

c/o Frank Martin Wolff PA

19 E. Central Blvd.

Orlando, FL 32801-2468

Joseph Van Heyde II

800 North Magnolia Ave Ste 1500

Orlando, FL 32803-3269

Steven M Vanderwilt

9940 Hood Road

Jacksonville, FL 32257-1134

Keith A Yerian

5767 Treasure Lane

Grant, FL 32949-8203

American Express

Po Box 3001

16 General Warren Blvd

Malvern, PA 19355-1245

American Express Centurion Bank

c/o Becket and Lee LLP

POB 3001

Malvern, PA 19355-0701

Brevard County Tax Collector

Attn: Honorable Lisa Cullen, CFC

Post Office Box 2500

Titusville FL 32781-2500

Cach Llc/Square Two Financial

Attention: Bankruptcy

4340 South Monaco St. 2nd Floor

Denver, CO 80237-3485

Chase Card

Po Box 15298

Wilmington, DE 19850-5298

Chase Mtg

Po Box 24696

Columbus, OH 43224-0696

Dean Barker

3290 Kent Road

Stow, OH 44224-4512

Deborah W Yerian

17830 Galehouse Rd

Doylestown OH 44230-9374

Deborah W. Yerian

c/o CSPC

P.O. Box 182394

Columbus, OH 43218-2394

Discover Bank

Discover Products Inc

PO Box 3025

New Albany, OH 43054-3025

Discover Fin Svcs Llc

Po Box 15316

Wilmington, DE 19850-5316

Dsnb Macys

9111 Duke Blvd

Mason, OH 45040-8999

Emp of Wadsworth LTD

c/o Bay Area Credit Service

POB 467600

Atlanta, GA 31146-7600

Florida Department of Revenue

Bankruptcy Unit

Post Office Box 6668

Tallahassee FL 32314-6668

Internal Revenue Service

Post Office Box 7346

Philadelphia PA 19101-7346

JPMorgan Chase

c/o Real Time Resolutions, Inc.

1349 Empire Central Drive, Suite #150

Dallas, Texas 75247-4029

JPMorgan Chase Bank, N.A.

c/o LCS Financial Services Corporation

6782 S. Potomac Street, Suite 100

Centennial, CO 80112-4585

PNC BANK, N.A.

PO BOX 94982

CLEVELAND, OHIO 44101-4982

Pnc Bank

2730 Liberty Ave

Pittsburgh, PA 15222-4747

Pnc Bank

Attn: Bankruptcy

2730 Liberty Ave

Pittsburgh, PA 15222-4747

Pnc Bank Na

Po Box 3180

Pittsburgh, PA 15230-3180

Brett A Elam +
Law Offices of Brett A Elam PA
105 S. Narcissus Avenue, Suite 802
West Palm Beach, FL 33401-5530

Kevin Patrick Robinson +
Zimmerman Kiser & Sutcliffe PA
315 East Robinson Street
Suite 600
Orlando, FL 32801-4341

Michael A Nardella +
Nardella & Nardella, PLLC
250 East Colonial Drive, Ste 102
Orlando, FL 32801-1231

Richard B Webber +
Post Office Box 3000
Orlando, FL 32802-3000

Richard B Webber, Trustee +
Post Office Box 3000
Orlando, FL 32802-3000

Bradley J Anderson +
Zimmerman Kiser & Sutcliffe PA
315 East Robinson Street
Suite 600
Orlando, FL 32801-4341

Note: Entries with a '+' at the end of the name have an email address on file in CMECF

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Karen S. Jennemann
Orlando

(u)Nieves Santiago

(u)Jack Wingo

(d)Deborah W. Yerian
17830 Galehouse Rd
Doylestown, OH 44230-9374

End of Label Matrix	
Mailable recipients	39
Bypassed recipients	4
Total	43

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

IN RE:)
)
Keith A Yerian) Case # 6:15-bk-01720-KSJ
) Chapter 7
Debtor)
_____)

CERTIFICATE OF NECESSITY OF REQUEST FOR EMERGENCY HEARING

I HEREBY CERTIFY, as a member of the Bar of the Court, that I have carefully examined the matter under consideration and to the best of my knowledge, information and Belief formed after reasonable inquiry, all allegations are well ground in fact and all contentions are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law can be made, that the matter under consideration is not interposed for any improper purpose, such as to harass, to cause delay, or to increase the cost of litigation, and there is just cause to request a consideration of the following pleading on an emergency basis:

Trustee's Emergency Motion to Sell Real Property Free and Clear of Liens, Claims, Encumbrances, and Interests Pursuant to 11 U.S.C. § 363(f)

I CERTIFY FURTHER that there is a true necessity for an emergency hearing, specifically, because the Trustee seeks to sell Real Property in Puerto Rico and requires a hearing prior to January 31, 2018 for the following reasons:

1. Trustee has just been made aware of an HOA lien in the amount of \$6,946.51 and a Mortgage Note to Banco Popular in the amount of \$96,000.00.

2. The Mortgage Note was paid in full to Banco Popular by the Debtor at the time of purchase of the Property but the Satisfaction was never recorded. Trustee needs to obtain an Order from this Court approving the Sale of the Property free and clear of liens in order to obtain clear title.

3. The Buyer of the Property, Pedro Perez, is a disabled Vietnam Veteran with PTSD who will be homeless on February 1, 2018 if the closing does not take place on January 31, 2018.

I CERTIFY FURTHER that the necessity of this emergency hearing has not been caused by a lack of due diligence on my part, but has been brought about only by circumstances beyond my control or that of my client. I further certify that this motion is filed with full understanding of F.R.B.P. 9011 and the consequences of noncompliance with same.

Dated this 18th day of January, 2018.

/s/ Richard B. Webber II
Richard B. Webber II, Trustee
PO Box 3000
Orlando, FL 32802-3000
Phone: (407)425-7010
E-mail: rwebber@zkslawfirm.com